IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 6774 of 2002

Between:

G.Satyanarayana, S/o.Mallesh, Occ: Fitter Helper,

Singareni Collieries, Godavarikhani, R/o. D-88, Shivaji Nagar,

Godavarikhani, Karimnagar District.

..... PETITIONER

AND

1. Singareni Collieries Company Ltd., Godavarikhani,

Rep. By its General Manager, Ramagundam Area-I,

Godavarikhani, Karimnagar District.

2. Presiding Officer, Industrial Tribunal-cum-Labour Court,

Godavarikhani, Karimnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Director or Order, particularly one in the nature of Certiorari calling for the records pertaining to Industrial Disputes No.57/1998 on the file of the second respondent and the order of the dismissal No.P.RG.I/32/750, dated 16.2.1996 passed by the first respondent and quash the same as being illegal, arbitrary,

contrary to law, null and void and consequently direct the first respondent to reinstate the petitioner with continuation of service, back wages and all other attendant and consequential benefits.

Counsel for the Petitioner:MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: MR.K.SRINIVASA MURTHY

Counsel for the Respondent No.2: GP FOR LABOUR

The Court made the following :

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HON'BLE SRI JUSTICE K.C.BHANU

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WRIT PETITION NO.6774 OF 2002

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ORDER:

Challenging the award, dated 18.9.2001, passed in I.D.No.57 of 1998 on the file of Industrial Tribunal-Cum-Labour Court, Godavarikhani, (for short 'the Tribunal') the present writ petition is filed.

The brief facts that are necessary for disposal of the petition may be stated as follows:

The petitioner was initially appointed as Fitter Helper on 6.7.1981 in the first respondent Corporation. He was forced to proceed on leave frequently on account of his illness during the year 1993-94. Subsequently, he reported to duty and was discharging his duties regularly. While he was working on 21.9.1995 in the first shift, his right hand finger got severely injured and got cut while cutting the G.I.Sheet, and immediately he was shifted to the respondent hospital and as the same was not

cured, he was shifted to a private hospital and was forced to undergo treatment for a considerable period. The first respondent appears to have issued a charge memo, conducted an ex parte enquiry and passed orders of dismissal from service with effect from 19.2.1996, vide proceedings P.RG.I/32/750, dated 16.2.1996. The petitioner was not aware of the enquiry proceedings nor charge sheet as he was undergoing treatment in the hospital. It is alleged that the enquiry officer conducted a false and sham enquiry and he did not conduct the enquiry in accordance with law and in compliance with the principles of natural justice and it was not conducted fairly and properly. The petitioner has not been given any opportunity in the proceedings of enquiry and the findings of the enquiry officer are perverse. The first respondent failed to issue any show cause notice proposing the punishment of dismissal from service. Thereafter, the petitioner raised an industrial dispute being I.D.No.57 of 1998 on the ground that the dismissal order is contrary to law, opposed to all cannons of law and is in violation of principles of natural justice. It is alleged that the impugned order is patently illegal ex facie, and the Tribunal has failed to notice that the enquiry is vitiated and the order of dismissal is non-est. No reasons are given for rejecting the claim of the petitioner and hence the present writ petition.

A detailed counter affidavit has been filed by the first respondent stating that the petitioner was absenting from duties continuously from 1990. It is stated that the petitioner was not on duty on 21.9.1995. As the petitioner was absenting from duty continuously, a charge sheet, dated 17.5.1995, was issued to the petitioner as per the Company's Standing Orders. The charge sheet was posted to his native address as well as local address, but they were returned undelivered and as such the charge sheet was published in Telugu daily advertising on 25.7.1995 whereunder the petitioner was asked to submit his explanation within three days of its publication and he was also asked to attend the enquiry to be held on 22.8.1995, but the petitioner did not appear for the same. After enquiry, another notice was got published in Andhra Jyothi Telugu daily directing the petitioner to receive the enquiry report and copy of the enquiry proceedings and submit a representation within seven days, for which, the petitioner failed to attend and therefore, the first respondent authorities have passed the orders dismissing the petitioner from the service. Even before the Tribunal the petitioner has not evinced any interest and the Tribunal has rightly dismissed the application after considering the material on record and hence, there are no grounds to interfere with the impugned order.

Learned counsel for the petitioner contended that the Tribunal has to give a finding as to whether the domestic enquiry was conducted properly and fairly and without deciding the preliminary issue, simply dismissed the claim of the petitioner and therefore, seeks to set aside the impugned award and to remit the matter to the Tribunal for fresh consideration.

On the other hand, the learned counsel appearing for the first respondent contended that unless the rules require for giving second show-cause notice, there is no need to give any show-cause notice and hence, there was no violation of principles of natural justice. How the enquiry disciplinary proceedings are perverse, has not been stated in the petition. A show-cause notice was also given to the petitioner and as the petitioner was not receiving the notices, the same was got published in the newspaper, for which, there was no explanation and hence, the dismissal order has been passed.

Heard the learned counsel for the petitioner and the learned standing counsel for first respondent. Perused the material available on record.

The impugned order passed by the Tribunal is very brief, which reads as under:

"5. POINT: Ex.M.1 is charge-sheet, dated 17.5.1995.

Ex.M.3 is publication of charge sheet in Telugu daily 'Andhra Joythi'.

The Claimant remained ex parte in the enquiry.

6. The claimant was absent from duty for 274 days in the year 1994. The claimant was not available in his address. Charge sheet was published in Telugu daily. The claimant remained ex parte in the enquiry.

I consider that the charge against the petitioner is proved and the punishment of dismissal of the claimant from the service is proportion to the charge. Hence, I answer the point accordingly.

In the result, the reference is answered against the claimant. The dismissal of the claimant from the service is justified."

The contention of the learned counsel for the petitioner is that the preliminary issue as to whether the domestic enquiry conducted by the first respondent was held properly and fairly, has not been decided by the Tribunal in view of the decision of the Apex Court reported in **COOPER ENGINEERING LTD. v. P.P. MUNDHE.** In the said decision the Apex Court held as under:

"We are therefore, clearly of the opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there shall be no difficulty. But when the mater is in dispute between the parties, that question must be decided as a preliminary issue."

From the above decision, it is clear that if there is any controversy with regard to holding of domestic enquiry, then the question must be decided as a preliminary issue. It is alleged in the claim petition that the enquiry was not conducted fairly and properly; the petitioner was not given any opportunity to participate in the proceedings of the enquiry; no cogent evidence was adduced by the management to prove the charges; no documents were served on the petitioner basing on the charges; the findings of the enquiry officer are perverse and bias; and that the first respondent has failed to issue any show-cause notice proposing the punishment of dismissal from service. Mere allegations that the findings of the enquiry officer are perverse and bias, and the enquiry was not conducted fairly and properly, are not sufficient for a workman to raise a controversy or dispute. In what manner the enquiry was not fairly and properly conducted and how the findings are perverse and bias, are required to be pleaded and demonstrated before the Tribunal. The charge levelled against the petitioner is that he was unauthorized absent during the year 1994. A copy of the enquiry report is made available. The charge memo was issued to the petitioner and the same was sent by registered post, but it was returned with an endorsement 'absent from continuously seven days'. Therefore, the first respondent got published the same in 'Andhra Jyothi' Telugu daily on 25.7.1995 informing that the enquiry would be held on 22.8.1995 at 10.00 a.m., but the petitioner did not send any message expressing his inability to attend the enquiry. Further, it is to be seen that the witness, examined by the first respondent before the enquiry officer in the domestic enquiry, has categorically stated that the petitioner was absent for 275 days during the year 1994 without sanction of leave or sufficient cause. Therefore, basing on the material available on record, the enquiry officer gave a finding stating that the charges levelled against the petitioner are proved. The enquiry officer had also sent a copy of the enquiry report and enquiry proceedings to the petitioner with registered post acknowledgement due, but the same were returned with endorsement as 'continuously absent'. The first respondent

has also made an endeavour by way of publishing the copy of the enquiry report in Andhra Jyothi Telugu daily newspaper directing the petitioner to submit his explanation within seven days. As the opportunity given to the petitioner through paper publication was not availed, through the proceedings, dated 16.2.1996, he was dismissed from service with effect from 19.2.1996.

How the procedure is not followed or the standing orders, which govern the disciplinary matters, are violated in conducting the enquiry have not been stated in the claim petition. Except making bald and omni bus allegations that the enquiry was not conducted fairly and properly and the findings of the enquiry officer are perverse and bias, there was no factual foundation with regard to those aspects. All the steps that are necessary in conducting the enquiry have been taken by the first respondent. Since the petitioner has not raised any controversy with regard to the manner of conducting enquiry, no finding is recorded by the Tribunal. The petitioner must demonstrate how the findings are perverse and how the conducting of enquiry is unfair and improper. By using the words “perverse”, “bias”, “unfair” and “unfair and improper” do not lead to irresistible conclusion that the petitioner raised a controversy with regard to the enquiry. No-doubt, the Tribunal has not recorded any reasons in dismissing the claim of the petitioner, but, it applied its mind in passing the impugned award inasmuch as all the relevant documents were placed before the Tribunal. Even assuming that there was a controversy with regard to holding of enquiry, the petitioner has to demonstrate and substantiate as to how the enquiry conducted by the first respondent is defective or is in violation of principles of natural justice.

With regard to the issuance of second show-cause notice, it is not disputed before this Court that it will not vitiate the entire proceedings unless the rules provide for issuance of second show-cause notice indicating the proposed punishment. It is not brought to the notice of this Court by the petitioner that the rules governing the service conditions of the writ petitioner require issuance of show-cause notice for the proposed punishment. Even, before the Tribunal the matter had underwent several adjournments, and on any of the occasion, the petitioner has not evinced any interest to proceed with the matter. The award under challenge does not suffer from any incurable infirmities to call for interference by this Court under Article 226 of the Constitution of India.

The Writ Petition is devoid of merits and is accordingly dismissed. No order as to costs.

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K.C.BHANU, J

6th JULY, 2005.

Tsr.

To

1. The General Manager, Singareni Collieries Company Ltd.,

Ramagundam Area-I, Godavarikhani, Karimnagar District.

2. Two C.C.s to Government Pleader for Labour, High Court Buildings,

Hyderabad. (OUT)

3. 2 C.D. copies.

4. The Presiding Officer, Industrial Tribunal-Cum-Labour Court,

Godavarikhani, Karimnagar District.